



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

August 28, 1970

Hon. J. W. Edgar  
Commissioner of Education  
201 East 11th Street  
Austin, Texas

Opinion No. M- 667

Re: Authority of Texas Education  
Agency to consider damages as  
part of administrative appeal  
of a teacher discharged by a  
local school district.

Dear Dr. Edgar:

By recent letter you have requested an opinion in  
regard to the above stated, and we quote from your letter as  
follows:

"As reflected in the enclosed excerpt  
from Minutes of the meeting of the State Board  
of Education on June 6, 1970, the State Board  
has acted to submit to the Office of Attorney  
General the following questions, the answers  
to which will prove helpful in its review of  
an appeal now pending:

1. Does responsibility or authority exist in  
the Commissioner of Education or the State  
Board of Education in a proper appeal, where-  
in it is decided that a teacher was dismissed  
from teaching without just cause and without  
pay prior to termination of his contract, to  
determine and direct payable as an item of  
damages moving-expenses incurred and claimed  
by the teacher in looking for and securing  
other employment?
2. Or, in computations relative to the deter-  
mination of loss of salary as damages and the  
mitigation thereof, may moving-expense be  
deducted from total salary earned by the  
teacher elsewhere from date of dismissal to  
expiration day of the teacher contract, there-  
by indirectly to allow moving-expense as an  
item of damages?"

We answer "No" to both of your questions and will dis-  
cuss them together.

The issues of unliquidated damages and penalties are inherently judicial in nature. Foree v. Crown Central Petroleum Corporation, 431 S.W.2d 312, 316 (Tex.Sup. 1968). This decision and others further hold that in the absence of a clear statute, the courts are not ousted from their original primary jurisdiction to determine these issues. Gregg v. Delhi-Taylor Oil Corp., 162 Tex. 26, 344 S.W.2d 411, 415 (1961); State v. Harrington, 407 S.W.2d 467, 474 (Tex.Sup. 1966, cert.den. 386 U.S. 944); Lacour v. Devers Canal Co., 319 S.W.2d 951 (Tex.Civ.App. 1959, error ref., n.r.e.); Attorney General Opinion addressed to the State Board of Education, dated July 16, 1930, holding that damages for breach of contract could not be determined by the state agency under the statutory powers of that agency but such was a question for a court to determine.

We do not find any statutes authorizing either local school boards, the Commissioner of Education or the State Board of Education to consider or award damages to a public school teacher incidental to his teaching contract. The Texas Education Code, Section 21.215 contains certain provisions relative to the discharge of a teacher or the termination of his contract before its expiration and also provides for appeal from the local board of trustees to the Commissioner of Education and the State Board of Education. Further provisions with reference to the powers and duties of the Commissioner of Education and to such appeals are provided in Sections 11.52 and 11.13 of this Code. We find no authority in these Sections of this Code, nor in any other statute, which vests in either local school boards or the Commissioner or the State Board of Education any power to consider or adjudicate damages of any kind incidental to any question arising under a teacher's contract.

Our research fails to disclose either statutory authorization or case law prior to the effective date of the Texas Education Code, September 1, 1969, which recognizes the power of any of the above named school agencies to award damages. Such cases have restricted their consideration to the reinstatement of teachers' contracts and the right of the teacher to receive the compensation contracted for. Rocky Mount I.S.D. v. Jackson, 152 S.W.2d 400 (Tex.Civ.App. 1941, error ref.); Gragg v. Hill, 58 S.W.2d 150 (Tex.Civ.App. 1933, error ref.); and Stacy v. Bridge City I.S.D., 357 S.W.2d 618 (Tex.Civ.App. 1962, no writ).

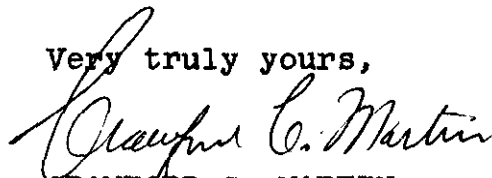
Clearly, no jurisdictional power to pass upon non-liquidated damages has been granted to either a local school board or to the Commissioner of Education or the State Board of Education. The principles discussed in the case of Middleton v. Texas Power & Light Co., 108 Tex. 96, 185 S.W. 556 (1916, opin. of Ct. App. on certified

questions, 188 S.W. 276, aff. 249 U.S. 152), which concerned the award of unliquidated damages fixed by the Legislature under the Workmen's Compensation Act, support our holding.

S U M M A R Y

Neither the Commissioner of Education nor the State Board of Education has the authority to determine the amount of unliquidated damages on an appeal by a teacher dismissed without cause by a school district.

Very truly yours,



CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Melvin E. Corley  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Kerns Taylor, Chairman  
W. E. Allen, Co-Chairman

Dan Green  
Jerry Roberts  
James Mabry  
Roger Tyler

MEADE F. GRIFFIN  
Staff Legal Assistant

ALFRED WALKER  
Executive Assistant

NOLA WHITE  
First Assistant